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bank subsidiaries of the holding company nor to maintain the availability of funds in its bank subsidiaries.

(d) The sale of the thrift notes, in the specific manner proposed, is an activity described in section 20 of the Banking Act of 1933 (12 U.S.C. 377), that is, “the issue, flotation, underwriting, public sale or distribution * * * of * * * notes, or other securities”. Briefly stated, this statute prohibits a member bank to be affiliated with a company “engaged principally” in such activity. Since the continued issuance and sale of such securities would be necessary to permit maintenance of the holding company’s activities without substantial contraction and would be an integral part of its operations, the Board concluded that the issuance and sale of such notes would constitute a principal activity of a holding company within the spirit and purpose of the statute. (For prior Board decisions in this connection, see 1934 Federal Reserve Bulletin 485, 12 CFR 218.104, 12 CFR 218.105 and 12 CFR 218.101.)

(e) In reaching this conclusion, the Board distinguished the proposed activity from the sale of short-term notes commonly known as *commercial paper*, which is a recognized form of financing for bank holding companies. For purposes of this interpretation, *commercial paper* may be defined as notes, with maturities not exceeding nine months, the proceeds of which are to be used for current transactions, which are usually sold to sophisticated institutional investors, rather than to members of the general public, in minimum denominations of \$10,000 (although sometimes they may be sold in minimum denominations of \$5,000). Commercial paper is exempt from registration under the Securities Act of 1933 by reason of the exemption provided by section 3(a)(3) thereof (15 U.S.C. 77c). That exemption is inapplicable where the securities are sold to the general public (17 CFR 231.4412). The reasons for such exemption, taken together with the abuses that gave rise to the passage of the Banking Act of 1933 (“the Glass-Steagall Act”), have led the Board to conclude that the issuance of commercial paper by a bank holding company

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is not an activity intended to be included within the scope of section 20.

(Interprets and applies 12 U.S.C. 377 and 1843)

[Reg. Y, 38 FR 35231, Dec. 26, 1973]

§ 250.240 Applicability of section 23A of the Federal Reserve Act to transactions between a member State bank and its “operations subsidiary”.

(a) The Board of Governors has recently considered whether section 23A of the Federal Reserve Act (12 U.S.C. 371c) applies to extensions of credit by a member State bank to its operations subsidiary.

(b) Section 23A imposes limitations (in terms of security and amount) on a federally insured bank’s loans to and investments in its affiliates. The principal purpose of section 23A is to safeguard the resources of a bank against misuse for the benefit of organizations under common control with the bank. It was designed to prevent a bank from risking too large an amount in affiliated enterprises and to assure that extensions of credit to affiliates will be repaid—out of marketable collateral, if necessary.

(c) Since 1968 the Board has permitted member banks to establish and own operations subsidiaries—that is, organizations designed to serve, in effect, as separately incorporated departments of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly (12 CFR 250.141). Since an operations subsidiary is in effect a part of, and subject to the same restrictions as, its parent bank, there appears to be no reason to limit transactions between the bank and such subsidiary any more than transactions between departments of a bank.

(d) Accordingly, the Board has concluded that a credit transaction by a member State bank with its operations subsidiary (the authority for which is based on the 1968 ruling) is not a “loan or * * * extension of credit” of the kind intended to be restricted and regulated by section 23A and is, therefore, outside the purview of that section.

[35 FR 10201, June 23, 1970]